

**STATE OF DELAWARE**

**PILOT PROGRAM**

**FOR THE PROCUREMENT OF**

**SOLAR RENEWABLE ENERGY CREDITS**

**RECOMMENDATIONS OF THE RENEWABLE ENERGY TASKFORCE**

**May \_\_, 2011**

## **TABLE OF CONTENTS**

1. Statutory Background .....	1
2. Solar Renewable Energy Credits .....	2
2.1 General .....	2
2.2 Banking of SRECs .....	3
2.3 Bonus for Use of Local Equipment or Labor .....	3
3. The Delaware Renewable Energy Taskforce .....	3
4. Program Administration; Eligibility .....	4
4.1 Public Solicitations .....	5
4.2 Owner Qualifications .....	5
4.3 Eligible Projects .....	6
4.4 Ongoing Program Evaluation .....	7
5. Bid Applications .....	8
5.1 General Requirements .....	8
5.2 Estimated Output .....	8
5.3 Bid Deposit .....	9
6. SREC Transfer Agreements .....	10
6.1 Term of Agreement .....	11
6.2 SREC Quantity .....	11
6.3 Pricing .....	13
6.4 Utility Interconnections .....	13
6.5 Guaranteed On-Line Date; Delay Liquidated Damages .....	13
6.6 Payment .....	14
6.7 Metering .....	14
6.8 Conditions Precedent .....	14
6.9 Performance Credit Support .....	15
6.10 Project Maintenance; Inspections .....	16
6.11 Excused Performance .....	16
6.12 Default Provisions .....	16
6.13 Remedies .....	17
6.14 Replacement of Owner Representative .....	18
7. Bid Awards .....	18
7.1 Tier 1 and Tier 2 Solicitations .....	18
7.2 Tier 3 Solicitations .....	19
7.3 Reduction in Capacity .....	21
8. Solicitation for 2011 Compliance Year .....	21
8.1 Resource Allocation .....	21
8.2 Pricing .....	22

## INDEX OF DEFINED TERMS

<i>Bidding Tie</i> .....	20	<i>Minimum Annual Quantity</i> .....	12
<i>Contract Maximum</i> .....	12	<i>MWh</i> .....	2
<i>Contracting Agent</i> .....	5	<i>Owner</i> .....	6
<i>Delmarva</i> .....	3	<i>Owner Representative</i> .....	6
<i>DEMEC</i> .....	5	<i>REC</i> .....	2
<i>DPSC</i> .....	1	<i>REPSA</i> .....	1
<i>Eligible Energy Resources</i> .....	1	<i>SEU</i> .....	3
<i>Estimated SREC Quantity</i> .....	9	<i>SREC</i> .....	2
<i>Execution Date</i> .....	11	<i>SREC Procurement Administrator</i> .....	5
<i>GATS</i> .....	2	<i>SREC Procurement Pilot Program</i> .....	4
<i>Generation Unit</i> .....	1	<i>SREC Transfer Agreement</i> .....	8
<i>GEP</i> .....	6	<i>STC</i> .....	6
<i>Guaranteed On-Line Date</i> .....	13	<i>Taskforce</i> .....	3
<i>kW</i> .....	6		

## APPENDICES

- Appendix A Form of Bid Application
- Appendix B Form of SREC Transfer Agreement (Tiers 1 and 2)
- Appendix C Form of SREC Transfer Agreement (Tier 3)

**STATE OF DELAWARE  
PILOT PROGRAM  
FOR THE PROCUREMENT OF  
SOLAR RENEWABLE ENERGY CREDITS**

1. **Statutory Background**

The Delaware Renewable Energy Portfolio Standards Act (as amended, “**REPSA**”), requires retail electricity suppliers operating in the State of Delaware to purchase energy from “**Eligible Energy Resources**” to meet a portion of their retail load.<sup>1</sup> For the 2011 compliance year (beginning June 1, 2011), retail electricity suppliers must purchase at least 7% of their retail load in Delaware from renewable resources. That requirement increases to 25% for the 2025 compliance year. The cost of procuring renewable energy to satisfy the requirements of REPSA is passed through to retail customers.

REPSA was amended in 2007 to require that a certain portion of each retail electricity supplier’s renewable energy requirement be satisfied with energy from solar technologies. The 2010 amendments to REPSA established a solar set aside of 0.20% for the 2011 compliance year, which increases to 3.50% for the 2025 compliance year. For 2026 and future compliance years, the Delaware Public Service Commission (“**DPSC**”) will establish solar set-asides at levels at least equal to the 2025 set-aside.

To encourage the development of new renewable energy generation, REPSA mandates that no more than 1% of the renewable energy purchase requirement can be satisfied by purchases from renewable energy generation resources (each, a “**Generation Unit**”) that were in commercial operation prior to January 1, 1998. For the 2026 and subsequent compliance years,

---

<sup>1</sup> Eligible Energy Resources are defined to include those that produce solar photovoltaic or solar thermal energy, wind energy, ocean energy, geothermal energy or energy from fuel cells powered by renewable fuels. Also included are biogas, small-scale hydroelectric, biomass and certain qualifying landfill gas recovery projects. Eligible Energy Resources do not include waste-to-energy facilities, incinerators or generating resources fueled by fossil-fuel waste products.

no such pre-existing Generation Units will be eligible to satisfy any portion of the REPSA requirement.

When it enacted REPSA, the Delaware General Assembly acknowledged that “the benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state.”<sup>2</sup> It therefore directed the DPSC to “establish, maintain or participate in a market-based renewable energy tracking system to facilitate the creation and transfer of renewable energy credits among retail electricity suppliers.”<sup>3</sup>

## 2. Solar Renewable Energy Credits

### 2.1 General

To implement the mandate of REPSA, the DPSC adopted regulations that recognize the creation, and facilitate the tracking through PJM Interconnection’s Generation Attributes Tracking System (“**GATS**”), of renewable energy credits (each, a “**REC**”). A REC is a tradable instrument that represents the non-price characteristics (*e.g.*, fuel type, geographic location, emissions and vintage) of electric energy derived from an Eligible Energy Resource.<sup>4</sup> One REC is equivalent to such characteristics associated with 1 megawatt-hour (“**MWh**”) of energy derived from such a resource. A solar renewable energy credit (an “**SREC**”) represents the same non-price characteristics of 1 MWh of energy derived from an Eligible Energy Resource that generates electric energy using solar photovoltaic technology.

---

<sup>2</sup> 26 Del. Code Regs. § 351(b). The benefits recognized by the General Assembly include “improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities.” *Id.*

<sup>3</sup> *Id.* § 359(a).

<sup>4</sup> A REC does not include any emission reduction credits or allowances required to comply with any necessary permits for Generation Units.

RECs and SRECs are created upon the generation of electricity by an Eligible Energy Resource and the registration of such REC or SREC within GATS. Each owner of an Eligible Energy Resource is entitled to one REC or SREC, as applicable, for each MWh of energy generated by the resource. Such owners must therefore have an account within the GATS or have arranged with another entity that has such an account to act on its behalf.

## 2.2 Banking of SRECs

Once a REC or SREC is created, it continues to exist for three years or until it is retired to satisfy the requirements of REPSA. Such three-year period is tolled during any period that a REC or SREC is held by the Delaware Sustainable Energy Utility (the “*SEU*”).

## 2.3 Bonus for Use of Local Equipment or Labor

Generation Units sited in Delaware are entitled to a 10% “bonus” on REC and SREC production if: (a) 50% or more of the cost of the renewable energy equipment comprising the Generation Unit (including mounting equipment) is manufactured in Delaware; or (b) in-state labor is used for the construction and/or installation of at least 75% of the unit. Generation Units that meet both criteria are entitled to an aggregate 20% bonus. Satisfaction of these criteria must be certified by the DPSC.

## 3. The Delaware Renewable Energy Taskforce

The 2010 amendments to REPSA established the Renewable Energy Taskforce (the “*Taskforce*”) to make “recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware.”<sup>5</sup> The

---

<sup>5</sup> *Id.* § 360(d). The Taskforce is comprised of 11 members representing a broad cross-section of entities interested in and concerned with the implementation of renewable energy policy in Delaware. The 2010 amendment to REPSA stipulates that the Taskforce be made up of: (a) four appointments by the Secretary of the Delaware Department of Natural Resources and Environmental Control, including one from the renewable energy research and development industry, one from the local renewable energy manufacturing industry and one from an environmental advocacy organization; (b) one appointment by the DPSC; (c) one appointment by Delmarva Power & Light Company (“*Delmarva*”); (d) one appointment by the Delaware Electric Cooperative; (e) one appointment

Taskforce was directed to find ways to increase deployment of solar generation and enhance the market for SRECs. Its responsibilities include making recommendations about the following:

- establishing a balanced market mechanism for REC and SREC trading;
- establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;
- minimizing the cost for complying with REPSA;
- establishing revenue certainty for appropriate investment in solar renewable energy technologies, including consideration of long-term contracts and auction mechanisms;
- establishing mechanisms to maximize in-state solar renewable energy generation and local manufacturing; and
- ensuring that residential, commercial and utility scale photovoltaic and solar thermal systems of various sizes are financially viable and cost-effective instruments in Delaware.

The Taskforce appointed a special subcommittee to consider and make recommendations regarding the SREC procurement process. That subcommittee met on numerous occasions over several months and evaluated a variety of alternative approaches to SREC procurement in an effort to reach a consensus on a comprehensive program designed to meet the objectives set forth in REPSA with respect to the development of solar generation resources. Based on the subcommittee's work, the Taskforce is recommending a statewide pilot program for the 2011 compliance year (the "*SREC Procurement Pilot Program*") that it believes will encourage solar development in the State of Delaware while minimizing costs for owners, developers, aggregators, consumers and other participants in the SREC market in Delaware.

#### 4. **Program Administration; Eligibility**

---

by municipal electric companies; (f) one appointment by the SEU; (g) one appointment by the Delaware Public Advocate; and (h) one appointment by the Delaware Solar Energy Coalition. *Id.* § 360(d)(1).

#### 4.1 Public Solicitations

The Taskforce believes that the procurement of SRECs by retail electricity suppliers operating in the State of Delaware should be implemented through public solicitations conducted for different categories of solar generators based on their capacity. The participating retail electricity suppliers will select a single entity (the “*SREC Procurement Administrator*”) to implement and manage the SREC Procurement Pilot Program.<sup>6</sup> Initially, they have selected the SEU to act as the SREC Procurement Administrator.

The SREC Procurement Administrator will evaluate and award bids and execute agreements to purchase SRECs from qualifying projects. The SREC Procurement Administrator’s payment obligations will be backed by the obligations of the participating retail electricity suppliers to the SREC Procurement Administrator on a proportional basis reflecting their respective SREC purchase obligations.<sup>7</sup>

The solicitations will be for SRECs only; the project owners will be free to utilize or sell the energy produced at Eligible Energy Resources in any manner they choose. Each solicitation will be based on the SREC requirements of the participating retail electricity suppliers as communicated to the SREC Procurement Administrator.

#### 4.2 Owner Qualifications

To apply on its own behalf to sell SRECs pursuant to the SREC Procurement Pilot Program, a party must: (a) own, lease, control, or be the direct assignee of all of the SRECs created by the operation of at least one solar Eligible Energy Resource with a nameplate rating of

---

<sup>6</sup> It is anticipated that the SREC Procurement Administrator will select a third party (the “*Contracting Agent*”) to perform some or all of its duties with respect to the SREC Procurement Pilot Program, including conducting solicitations, evaluating bids and executing agreements on behalf of the SREC Procurement Administrator. If it does so, the process for selecting the Contracting Agent, and the choice of the Contracting Agent itself, would be subject to the consent of the participating retail electricity suppliers.

<sup>7</sup> Currently, the participating retail electricity suppliers in the State of Delaware are Delmarva and the Delaware Municipal Electric Corporation, Inc. (“*DEMEC*”).



at least 100 kilowatts (“***kW***”) (DC) at standard test conditions (“***STC***”); or (b) have executed agreements<sup>8</sup> to control the SRECs produced by two or more Eligible Energy Resources (any such party, an “***Owner***”). Any other party intending to participate in the SREC Procurement Pilot Program, will be required to submit an application jointly with an entity that has executed agreements<sup>9</sup> to control the SRECs produced by two or more Eligible Energy Resources (such entity, an “***Owner Representative***”).

An Owner that is qualified to submit an application on its own behalf may, at its option, elect to designate an Owner Representative. Affiliates of retail electricity suppliers are permitted to participate in the SREC Procurement Pilot Program as Owners or Owner Representatives (so long as they satisfy the applicable requirements for being an Owner or Owner Representative).

#### 4.3 Eligible Projects

To qualify for participation in the SREC Procurement Pilot Program, a Generation Unit must: (a) qualify as a “Solar Photovoltaic Energy Resource” in accordance with the DPSC rules; (b) be eligible for certification as an Eligible Energy Resource under REPSA; and (c) be comprised of new (*i.e.*, unused) equipment. Only Generation Units that have received approvals of their “Accepted Completed Solar System Interconnection Applications” dated December 1, 2010 or later will be eligible to participate in the SREC Procurement Pilot Program. In addition, only projects that have not received supplemental funding from a public source (other than grants associated with the Delaware Green Energy Program (“***GEP***”) or grants in lieu of investment tax credit) are eligible to participate in the SREC Procurement Pilot Program.

---

<sup>8</sup> An Owner need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources.

<sup>9</sup> An Owner Representative need not have been awarded SREC Transfer Agreements with respect to its Eligible Energy Resources. It need only have executed agreements with Owners of two or more such resources.

To assure that Generation Units of different sizes have a reasonable opportunity to participate in the SREC Procurement Pilot Program, the Taskforce has designed the program to provide for separate solicitations (with different terms, conditions and pricing) for different sized Generation Units. The project categories are as follows:

#### **GENERATION UNIT TIER DESIGNATIONS**

<u>Tier</u>	<u>Nameplate Rating (DC) at STC</u>
1	Less than or equal to 50 kW
2	Greater than 50 kW but less than or equal to 500 kW
3	Greater than 500 kW but less than or equal to 2 MW
4	Greater than 2 MW <sup>10</sup>

For purposes of determining the capacity of a Generation Unit and its applicable tier, all solar arrays that are located on property owned, leased or controlled by the same entity or any of its affiliates and for which applications are submitted for the same compliance year shall be considered part of the same Generation Unit.

#### **4.4 Ongoing Program Evaluation**

The Taskforce will evaluate the SREC Procurement Pilot Program on a periodic basis to consider whether any changes or modifications are necessary or advisable. Any changes or modifications to the program (*e.g.*, the allocation of SRECs among the three tiers) would be prospective only and executed SREC Transfer Agreements (as defined below) would not be affected. Any material changes to the SREC Procurement Pilot Program would be subject to approval by the appropriate regulatory bodies.

---

<sup>10</sup> The procurement of SRECs for Tier 4 for the 2011 compliance year was satisfied in full with the purchase of SRECs from the Dover Sun Park Project. Accordingly, the process for procuring SRECs from Tier 4 projects is not included in the initial pilot SREC Procurement Pilot Program.

## 5. **Bid Applications**

### 5.1 **General Requirements**

Each Owner must submit, or designate its Owner Representative to submit, a completed bid application for each Generation Unit for which it intends to participate in the SREC Procurement Pilot Program. The application (the form of which is appended hereto as Appendix A) must include:

- the identity of the Owner and each of its affiliates that own any Eligible Energy Resources;
- a description of the Generation Unit, including its location, the types of solar panels being used and its nameplate rating (at STC);<sup>11</sup>
- a certification by the Owner of any grants associated with the GEP or other supplemental funding it has received or is entitled to receive;
- if the Owner is not qualified to submit an application on its own behalf or if the Owner otherwise elects to designate an Owner Representative, the identity of the Owner Representative; and
- designation of the GATS account (of the Owner or Owner Representative) into which the SRECs will be deposited.

In addition, each bid application must be accompanied by:

- a standard form agreement (an “*SREC Transfer Agreement*”) to sell SRECs to the SREC Procurement Administrator executed by the Owner and, if necessary or elected, an Owner Representative;
- the appropriate deposit; and
- an analysis of the estimated annual energy output using PVWatts Solar PV Energy Calculator or such other modeling technique as may be acceptable to the SREC Procurement Administrator.

### 5.2 **Estimated Output**

---

<sup>11</sup> The equipment description contained in the application is not binding on an Owner or an Owner Representative, provided that: (a) except as expressly permitted in accordance herewith, the nameplate rating (at STC) of any substitute equipment may not vary from that described in the original application by more than 5% for Tier 1 or Tier 2 projects, or 2.5% for Tier 3 projects; and (b) in no event will the substitution of different equipment affect the Estimated SREC Quantity contained in the original application.

Each application to sell SRECs pursuant to the SREC Procurement Pilot Program must include a binding estimate of: (a) the annual energy output of the Eligible Energy Resource, as determined using PVWatts Solar PV Energy Calculator or such other modeling technique as may be acceptable to the SREC Procurement Administrator; and (b) the annual SREC production levels (such estimate of the SREC production levels, the “*Estimated SREC Quantity*”). The estimates for energy output and SREC production levels shall be subject to an annual degradation factor of 0.5%.

For Eligible Energy Resources claiming a “bonus” based on the use of Delaware-sourced equipment and/or local labor (as described in Section 2.3 above), the application must include a description of the equipment and/or identification of the contractor or work force upon which such claim is based and the binding SREC output estimate for such resources should include any such bonus SRECSs.<sup>12</sup> Failure to claim a bonus at the time an application is submitted will disqualify a project from being entitled to the bonus, regardless of whether Delaware-sourced equipment or local labor is later employed.

### 5.3 Bid Deposit

Each application to participate in the SREC Procurement Pilot Program must be accompanied by a bid deposit in an amount equal to \$100 per kW (DC) of the nameplate rating (at STC) of the Eligible Energy Resource; provided, however, that the bid deposit will be waived for qualifying projects that provide a copy of their DPSC certification as an Eligible Energy Resource along with their bid application,. All bid deposits must be in the form of an acceptable

---

<sup>12</sup> The “bonus” SRECs are not actually created until such time as a retail electricity supplier retires the SRECs to which the bonus applies. However, under the terms of the SREC Transfer Agreements, as long as the Owner provides evidence that the DPSC has certified that the Eligible Energy Resource qualifies for the “bonus,” payment for the SRECs will include the “bonus” amount. If a “bonus” is claimed in an application and the project is later determined not to qualify, the Estimated SREC Quantity will be reduced accordingly.

letter of credit, cash or a bid bond<sup>13</sup> and will be held by the SREC Procurement Administrator on behalf of the participating retail electricity suppliers.

The bid deposits will be returned or released promptly upon: (a) rejection of an application; or (b) termination of an SREC Transfer Agreement based on the imposition by the interconnecting utility of a charge other than a standard interconnection fee (as described in Section 6.4 below). The bid deposit will be forfeited for any project that claims a “bonus” based on the use of Delaware labor but fails to qualify for such bonus. Otherwise, the bid deposit will be returned upon completion and commencement of operation of the Generation Unit on or prior to the Guaranteed On-Line Date (as defined in Section 6.5 below) and the posting of performance credit support (as described in Section 6.9 below). For Generation Units that commence operation after such date, the bid deposit will be used to pay delay liquidated damages (as described in Section 6.5 below) and the balance, if any, will be returned to the Owner promptly after the commencement of operation and the posting of performance credit support (as described in Section 6.9 below). Cash deposits will not earn interest.

## **6. SREC Transfer Agreements**

In order to minimize transaction costs, the SREC Procurement Administrator will enter into standard form SREC Transfer Agreements with Owners and, if required or elected by such Owners, the Owner Representatives. SREC Transfer Agreements for Tier 1 and Tier 2 projects will have standard pricing. Tier 3 projects will be allowed to submit their own bid prices, and SREC Transfer Agreements will be awarded based on the lowest bid price. Such price terms will be included in the SREC Transfer Agreements for Tier 3 projects.

---

<sup>13</sup> A bid bond must be in the form of American Institute of Architects (AIA) Form 310. In addition, any applicant that provides a bid bond as bid security will be required to replace such bond with a deposit in the form of a letter of credit or cash no later than 10 days after the SREC Procurement Administrator provides notice that its bid application has been granted.

The SREC Procurement Administrator will countersign each SREC Transfer Agreement promptly upon determining that the associated application and bid qualify for selection pursuant to the pending solicitation (the date of signing by the SREC Procurement Administrator, the “*Execution Date*”). Each SREC Transfer Agreement will include:

- the Owner’s agreement to maintain the Generation Unit as an Eligible Energy Resource;
- an acknowledgment by the Owner and, if applicable, the Owner Representative that: (a) the SREC Procurement Administrator and retail electricity suppliers have the right to inspect the Generation Unit (which right may be assigned to qualified third parties); (b) the SREC Procurement Administrator has the right to right to resell the SRECs in any market where they are eligible to be traded, including states other than Delaware; and (c) the participating retail electricity suppliers are third party beneficiaries, and entitled to directly enforce the terms, of the SREC Transfer Agreement; and
- if the Owner is designating an Owner Representative, the appointment of the Owner Representative as the Owner’s exclusive agent to manage SRECs within GATS on Owner’s behalf.

**[There will be one form of SREC Transfer Agreement for Tier 1 projects and Tier 2 projects and a modified form of agreement for Tier 3 projects. Both forms of SREC Transfer Agreement are appended hereto as Appendices B and C.]** Some of the principal terms and conditions of the SREC Transfer Agreement are described in this Section 6.

#### 6.1 Term of Agreement

All SREC Transfer Agreements will have a term of 20 years. The term will commence as of the first day of the month after the latter of: (a) the date as of which the Generation Unit is certified as an Eligible Energy Resource by the DPSC; or (b) the Execution Date of such agreement.

#### 6.2 SREC Quantity

Pursuant to each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative will be obligated to transfer (by registering within GATS) and sell to the SREC

Procurement Administrator, and the SREC Procurement Administrator will be obligated to purchase and pay for, all of the SRECs produced at the Generation Unit up to the Contract Maximum (as defined below). To facilitate more efficient management and accounting for SREC procurement, and to maximize opportunities for the largest possible group of Owners to participate in the SREC Procurement Pilot Program, the quantity of SRECs that may be delivered pursuant to any SREC Transfer Agreement during any annual period will be limited to 110% of the Estimated SREC Quantity for such period (such amount, the “***Contract Maximum***”). All SRECs delivered pursuant to an SREC Transfer Agreement must be created based on the output of the Generation Unit that is the subject of that agreement. In the event a Generation Unit produces SRECs in excess of the Contract Maximum, the SREC Procurement Administrator will have the option to elect whether or not to purchase any or all of the surplus SRECs. If it exercises that option, the sale of any such excess SRECs will be subject to the same terms, conditions and pricing applicable to other SREC purchases under the SREC Transfer Agreement. If the SREC Procurement Administrator declines to purchase, or purchases only a portion of, the excess SRECs, the SREC Procurement Administrator would transfer any excess SRECs back to the Owner, who would have the right to sell such excess SRECs in the spot market.

For Tier 3 projects, the Owner and, if applicable, the Owner Representative will be obligated to sell to the SREC Procurement Administrator, for each annual period, a quantity of SRECs equal to no less than 80% of the Estimated SREC Quantity for such period (the “***Minimum Annual Quantity***”).

The Estimated SREC Quantity may not be amended unless the Owner reduces the capacity of a Generation Unit either to avoid or minimize any interconnection fees or charges

sought to be imposed by the interconnecting utility (as described in Section 6.4) or to allow the Generation Unit to fit within a pending solicitation (as described in Sections 7.1, 7.2 and 7.3).

### 6.3 Pricing

The Taskforce has established standard pricing for Tier 1 and Tier 2 projects. For Tier 3 projects: (a) pricing for the first 10 years of the term of the SREC Transfer Agreement will be equal to the SREC price bid in the application (which price shall be flat during such 10-year period); and (b) pricing for the final 10 years of the term is standardized.

### 6.4 Utility Interconnections

Each Owner must submit a complete interconnection application (Step 1) to the interconnecting utility no later than 60 days after the Execution Date. If, based on that application, the interconnecting utility proposes to assess any fee or charge (other than a standard interconnection application fee), the Owner may, within 10 days of notice of such fee or charge by the interconnecting utility, either reduce the capacity of the Generation Unit to avoid or minimize such fee or charge or terminate the SREC Transfer Agreement.

If an Owner reduces the capacity of a Generation Unit to avoid or minimize an interconnection charge, the Estimated SREC Quantity will be reduced by the same percentage and any excess deposit will be returned to the Owner.<sup>14</sup> If an Owner elects to terminate the SREC Transfer Agreement based on the imposition of an interconnection fee or charge, the entire deposit will be returned.

### 6.5 Guaranteed On-Line Date; Delay Liquidated Damages

All Tier 1, Tier 2 and Tier 3 projects must commence operation no later than 12 months after the Execution Date (the “***Guaranteed On-Line Date***”), provided, however, that the

---

<sup>14</sup> A reduction in capacity to avoid or minimize an interconnection charge will not affect pricing under the SREC Transfer Agreement, regardless of whether the reduced capacity would have qualified the project to submit an application for a lower tier.



Guaranteed On-Line Date will be subject to extension to the extent reasonably necessary based on: (a) events beyond the reasonable control of the Owner (*i.e.*, force majeure as defined in the SREC Transfer Agreement); or (b) the failure by the interconnecting utility to complete the interconnection (provided that the Owner or, if applicable, the Owner Representative shall have submitted a timely and complete interconnection application to the interconnecting utility). In no event will the Guaranteed On-Line Date be extended for more than one additional year.

For any Generation Unit that fails to meet its Guaranteed On-Line Date, the Owner and, if applicable, the Owner Representative will be liable to pay delay damages for each full or partial day of delay. The amount of such damages will be equal to 1/30<sup>th</sup> of the deposit amount. In the event a Generation Unit is not operational within 30 days of its Guaranteed On-Line Date, the SREC Procurement Administrator will have the right to terminate the SREC Transfer Agreement.

#### 6.6 Payment

The SREC Procurement Administrator will pay for SRECs on a quarterly basis for Tier 1 projects and on a monthly basis for Tier 2 and Tier 3 projects. Each Owner will stipulate in the SREC Transfer Agreement whether payment is to be made to the Owner or, if applicable, the Owner Representative. Payment will be based on the number of SRECs transferred to and registered in the SEU's GATS account during the relevant billing period.

#### 6.7 Metering

All Tier 2 and Tier 3 projects must have a revenue-grade meter with on-line monitoring. Tier 1 projects must install at least a standard, utility-grade meter with on-line monitoring.

#### 6.8 Conditions Precedent

The SREC Procurement Administrator's purchase obligations under each SREC Transfer Agreement will be conditioned on: (a) the Owner providing evidence that it has received a

certification number from the DPSC confirming that the referenced Generation Unit qualifies as an Eligible Energy Resource; and (b) for Generation Units that are eligible in accordance with GATS rules and procedures, the Owner executing an irrevocable, standing order (in form and substance acceptable to the SREC Procurement Administrator) directing that all SRECs generated by such unit (up to the Contract Maximum) be transferred to the SEU's GATS account for the benefit of the participating retail electricity suppliers. For projects claiming a "bonus" based on the use of Delaware-sourced equipment or local labor (as described in Section 2.3 above), the SREC Procurement Administrator's obligations will also be subject to delivery of confirmation from the DPSC that the resource qualifies for the claimed bonus (which confirmation may be delivered within 30 days of the commencement of operation of the resource).

#### 6.9 Performance Credit Support

Pursuant to the terms of each SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative, will grant the SREC Procurement Administrator a security interest in all of the SRECs (up to the Contract Maximum) generated by the project to secure their respective obligations under the agreements, including the obligation to deliver and sell the SREC output of the project.

To secure their obligations to deliver the Minimum Annual Quantity, Owners or Owner Representatives of Tier 3 projects will also be required to provide supplemental credit support in the form of cash, a letter of credit or other collateral acceptable to the SREC Procurement Administrator. For each of the first 10 years of the SREC Transfer Agreement, such supplemental credit support shall be in an amount equal to 5% of the value (at the applicable price set forth in the SREC Transfer Agreement) of the first-year Estimated SREC Quantity; for each year thereafter, it shall be in an amount equal to 10% of the value of the Estimated SREC

Quantity for the 11<sup>th</sup> year of the agreement. The supplemental credit support must be replenished to the required level in the event any portion of the credit support is drawn or used.

#### 6.10 Project Maintenance; Inspections

Owners and, if applicable, Owner Representatives will be responsible for maintaining Generation Units so that they remain Eligible Energy Resources and are able to produce their respective Estimated SREC Quantities. Owners and Owner Representatives must notify the SREC Procurement Administrator of any substantive changes to the operational characteristics of the Generation Unit.<sup>15</sup>

The SREC Procurement Administrator will have the right to physically inspect Generation Units to verify compliance with the terms of their applicable SREC Transfer Agreements. The SREC Procurement Administrator may delegate that right to the Contracting Agent, any retail electricity suppliers or any other qualified third parties.

#### 6.11 Excused Performance

Owners will be excused from any delay in performance or failure to perform under an SREC Transfer Agreement caused by conditions beyond their reasonable control (*i.e.*, force majeure as defined in the SREC Transfer Agreement); provided, however, that such relief shall be limited to a period of one year for any single force majeure event.

#### 6.12 Default Provisions

Pursuant to the SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative will be in default if:

- the full SREC output of a Generation Unit (up to the Contact Maximum) is not made available to the SREC Procurement Administrator;

---

<sup>15</sup> Owners and Owner Representatives are also required to provide the SREC Procurement Administrator with copies of any notice(s) submitted to the DPSC pursuant to 26 Del. Admin. C. § 3008(3.1.8) and any additional correspondence related to such notice(s).

- for a Tier 3 project, the project fails to generate the Minimum Annual Quantity during any annual period and the Owner fails to pay applicable liquidated damages (as described in Section 6.13 below) within 30 days after the end of such annual period; or
- required credit support is not maintained.

In addition, an Owner Representative will be in default under an SREC Transfer Agreement if it fails to qualify as an Owner Representative under the terms of the SREC Procurement Pilot Program and such failure is not cured within 30 days of notice of such failure.

### 6.13 Remedies

Upon a breach or default by an Owner or an Owner Representative under an SREC Transfer Agreement, the SREC Procurement Administrator will be entitled to all of its remedies at law and in equity, including specific performance of and/or termination of the agreement. Upon a breach or default by the SREC Procurement Administrator under an SREC Transfer Agreement, the Owner and, if applicable, the Owner Representative, will be entitled to their respective remedies at law and in equity. Equitable remedies will include specific performance of such agreement.

In the event the SREC Procurement Administrator terminates an SREC Transfer Agreement based on a default by an Owner or Owner Representative, the SREC Procurement Administrator may recover damages equal to the incremental cost of replacing the expected output of SRECs for any remaining balance of the term of the agreement. If the default is based on the Owner or the Owner Representative refusing to sell the SREC output of the Eligible Energy Resource to the SREC Procurement Administrator, the SREC Procurement Administrator may recover damages calculated based on the difference between the price for SRECs under the SREC Transfer Agreement and the prevailing price for such SRECs in any market in which such SRECs are eligible to be traded, including markets other than Delaware.

If a Tier 3 project fails to produce the Minimum Annual Quantity of SRECs during any annual period, the Owner and, if applicable, the Owner Representative, will owe liquidated damages equal to the amount of the shortfall, multiplied by the difference between: (a) the lower of the prevailing spot market price of SRECs (as reasonably determined by the SREC Procurement Administrator) or the amount of the “Alternative Compliance Payment” (as defined in REPSA) for the year in which such shortfall occurs; and (b) the price for SRECs under the SREC Transfer Agreement. Such liquidated damages shall be due and payable no later than 30 days after the end of the annual period to which they apply. Payment of such liquidated damages will be the Owner’s or Owner Representative’s sole liability for the failure to deliver the Minimum Annual Quantity.

#### 6.14 Replacement of Owner Representative

An Owner may remove its Owner Representative at any time and for any reason (or no reason); provided, however, that if the Owner is not qualified to participate in the SREC Procurement Program on its own behalf, it will be obligated to designate a replacement Owner Representative (which replacement will accept a novation of the SREC Transfer Agreement) within 5 business days of the removal of the original Owner Representative. In the event an Owner who is not qualified to participate in the SREC Procurement Program on its own behalf fails to designate a replacement Owner Representative within such period, the SREC Procurement Administrator will have the right to designate the replacement Owner Representative, in its reasonable discretion.

### 7. Bid Awards

#### 7.1 Tier 1 and Tier 2 Solicitations

Promptly upon receipt of an application to sell SRECs from an Owner Representative or Owner in response to a solicitation issued pursuant to the SREC Procurement Pilot Program, the

SREC Procurement Administrator will review the application to verify whether it is complete and compliant with applicable procedures. Partial or incomplete applications will be rejected.

A solicitation for Tier 1 or Tier 2 projects will remain open until it is fully subscribed. All qualifying applications submitted pursuant to any such solicitation will be accepted for a period of 5 business days following the opening of such solicitation. If the total capacity of the Generation Units for which complete applications are received during such 5-day period is less than the allocation for such solicitation, all such applications will be accepted and SREC Transfer Agreements will continue to be awarded, on a “first come-first serve” basis, until the pending solicitation is fully subscribed.

If the total capacity of the Generation Units for which complete applications are received within 5 business days of the opening of a Tier 1 or Tier 2 solicitation exceeds the allocation for such solicitation, SREC Transfer Agreements for that tier will be awarded by lottery until such time as an application is selected that would cause the pending solicitation to be oversubscribed. At that point, the Owner submitting such application will have the option to reduce the capacity of the Generation Unit to equal the remaining balance of the pending solicitation. If the applicant elects not to reduce the capacity of the Generation Unit, that application will be rejected and the lottery will continue until the solicitation is fully subscribed or until only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed.

## 7.2 Tier 3 Solicitations

Tier 3 solicitations will be subject to competitive pricing. Each Tier 3 price bid must be for a fixed dollar amount, which amount cannot escalate or otherwise vary during the initial 10-year period of the term. The SREC Procurement Administrator will award SREC Transfer Agreements to projects with the lowest price bids. If the Tier 3 allocation is not fully subscribed

in the initial solicitation, a second solicitation will be held within the following six months for the balance of the Tier 3 allocation. The SREC Procurement Administrator will announce all Tier 3 bid deadlines at least 30 days in advance of the bid date.

The SREC Procurement Administrator will not be obligated to award any Tier 3 bid in excess of \$280 per SREC. In the event a Tier 3 application with a price bid in excess of \$280 per SREC would be eligible to be selected for a contract award by the SREC Procurement Administrator, the participating retail electricity suppliers will have the right, in their sole discretion, to determine whether or not to seek approval from the appropriate regulatory bodies to pass through the cost of purchasing such SRECs and, if such approval is granted, whether or not to authorize the SREC Procurement Administrator to execute an SREC Transfer Agreement based on such price bid.

If there are multiple bids at the same price that would cause the pending Tier 3 solicitation to be oversubscribed (a “**Bidding Tie**”), the SREC Procurement Administrator will give each applicant involved in the Bidding Tie a 5-day period to submit a reduced price bid and will then evaluate any revised bids submitted by the applicants involved in the Bidding Tie. The SREC Procurement Administrator will then award one or more SREC Transfer Agreements to some or all of the applicants involved in the Bidding Tie as follows:

- first, if any applicant submits a reduced price bid, to such applicant(s) on the basis of the lowest price bid until: (a) the pending solicitation is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; (b) the next highest price bid would cause the pending solicitation to be oversubscribed; or (c) there is a Bidding Tie with respect to the remaining bids;
- second, if after completion of the first step, the pending solicitation is not fully subscribed and there is a Bidding Tie with respect to the remaining bids, the SREC Procurement Administrator will award SREC Transfer Agreements based on a lottery among the remaining applicants involved in the Bidding Tie.

If a Tier 3 project selected based on bid price or by lottery would cause the pending solicitation to be oversubscribed, the SREC Procurement Administrator will give the applicant the option to reduce the capacity of the Generation Unit to the remaining balance of the pending solicitation. If the applicant elects not to reduce the capacity of the Generation Unit, its bid application will be rejected. If such project was selected based on its bid price, the solicitation will continue until: (a) the pending solicitation is fully subscribed or only a *de minimis* portion of the solicitation (as determined by the participating retail electricity suppliers) remains unsubscribed; or (b) there are no remaining applications with a bid price below \$280 per SREC.

### 7.3 Reduction in Capacity

If the Owner of a Tier 3 project opts to reduce the capacity of a Generation Unit so that it fits within a pending solicitation, the Estimated SREC Quantity will be reduced by an equal percentage. In addition, if such reduction qualifies the project for a lower tier, the original form of SREC Transfer Agreement will be terminated and replaced with the form of agreement applicable to the lower tier. In such case, the reduced capacity of the Generation Unit will be reallocated from the tier originally bid to such lower tier and any excess deposit will be returned to the Owner.

## 8. Solicitation for 2011 Compliance Year

### 8.1 Resource Allocation

Based on forecasted load, the SREC solicitations for the 2011 compliance year will be for 11,472 SRECs, which will be allocated as follows:

- Tier 1 - 2,972 SRECs;
- Tier 2 - 4,000 SRECs



- Tier 3 - 4,500 SRECs<sup>16</sup>

The SRECs procured in each tier will be allocated \_\_\_\_% to Delmarva and \_\_\_\_% to DEMEC.

## 8.2 Pricing

The Taskforce has established standard Tier 1 and Tier 2 pricing for the 2011 solicitation that it believes will encourage development of new solar generating resources while taking into account reasonable project development costs (as such costs may be off-set by available grants, subsidies and tax benefits). The pricing set forth herein was established based on assumptions developed by the Taskforce and by utilizing PV Planner software.<sup>17</sup> For purposes of developing the Tier 1 and Tier 2 pricing for the 2011 compliance year solicitation, the Taskforce assumed that: (a) all Tier 1 projects will receive the maximum amount of GEP grants, but no other supplemental funding; and (b) neither Tier 2 nor Tier 3 projects receive any GEP grants or other supplemental funding.<sup>18</sup>

Subject to the conditions stated herein, all SRECs bid pursuant to the 2011 solicitation will be eligible for the following pricing:

---

<sup>16</sup> Delmarva has already contracted to purchase 3,870 Tier 4 SRECs from the Dover Sun Park Project.

<sup>17</sup> PV Planner software has been developed over a 16-year period by the Center for Energy and Environmental Policy in consultation with the U.S. National Renewable Energy Laboratory and others. It utilizes meteorological data to forecast PV cell output and incorporates a vast quantity of data to model financial performance of solar generation units.

<sup>18</sup> Notwithstanding this assumption, tax-exempt organizations that own Tier 2 projects are, in fact, eligible for GEP grants. However, the Taskforce concluded that this cost advantage vis-à-vis “for-profit” businesses was neutralized by the fact that the “for-profit” businesses were entitled to tax advantages that are inapplicable to tax-exempt organizations.

### 2011 COMPLIANCE YEAR PRICING

<i>Project</i>	<i>Pricing</i>	
	<i>Years 1-10</i>	<i>Years 11-20</i>
Tier 1	\$270/SREC	\$50/SREC
Tier 2	\$250/SREC	\$50/SREC
Tier 3	Bid Price	\$50/SREC

The SEU will begin accepting applications for the 2011 solicitation on **[DATE]**.